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## NOTICE OF ALLOWANCE AND FEE(S) DUE

58467 7590 11/21/2008  
MHKKG/SUN  
P.O. BOX 398  
AUSTIN, TX 78767

EXAMINER	
HU, JINSONG	
ART UNIT	PAPER NUMBER
2454	

DATE MAILED: 11/21/2008

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/822,477	04/12/2004	Bruce D. Alexander	5681-76200	3141

TITLE OF INVENTION: SYSTEM AND METHOD FOR APPLICATION RESOURCE UTILIZATION METERING AND COST ALLOCATION IN A UTILITY COMPUTING ENVIRONMENT

APPLN. TYPE	SMALL ENTITY	ISSUE FEE DUE	PUBLICATION FEE DUE	PREV. PAID ISSUE FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	NO	\$1510	\$0	\$0	\$1510	02/23/2009

THE APPLICATION IDENTIFIED ABOVE HAS BEEN EXAMINED AND IS ALLOWED FOR ISSUANCE AS A PATENT. PROSECUTION ON THE MERITS IS CLOSED. THIS NOTICE OF ALLOWANCE IS NOT A GRANT OF PATENT RIGHTS. THIS APPLICATION IS SUBJECT TO WITHDRAWAL FROM ISSUE AT THE INITIATIVE OF THE OFFICE OR UPON PETITION BY THE APPLICANT. SEE 37 CFR 1.313 AND MPEP 1308.

THE ISSUE FEE AND PUBLICATION FEE (IF REQUIRED) MUST BE PAID WITHIN THREE MONTHS FROM THE MAILING DATE OF THIS NOTICE OR THIS APPLICATION SHALL BE REGARDED AS ABANDONED. THIS STATUTORY PERIOD CANNOT BE EXTENDED. SEE 35 U.S.C. 151. THE ISSUE FEE DUE INDICATED ABOVE DOES NOT REFLECT A CREDIT FOR ANY PREVIOUSLY PAID ISSUE FEE IN THIS APPLICATION. IF AN ISSUE FEE HAS PREVIOUSLY BEEN PAID IN THIS APPLICATION (AS SHOWN ABOVE), THE RETURN OF PART B OF THIS FORM WILL BE CONSIDERED A REQUEST TO REAPPLY THE PREVIOUSLY PAID ISSUE FEE TOWARD THE ISSUE FEE NOW DUE.

### HOW TO REPLY TO THIS NOTICE:

I. Review the SMALL ENTITY status shown above.

If the SMALL ENTITY is shown as YES, verify your current SMALL ENTITY status:

A. If the status is the same, pay the TOTAL FEE(S) DUE shown above.

B. If the status above is to be removed, check box 5b on Part B - Fee(s) Transmittal and pay the PUBLICATION FEE (if required) and twice the amount of the ISSUE FEE shown above, or

If the SMALL ENTITY is shown as NO:

A. Pay TOTAL FEE(S) DUE shown above, or

B. If applicant claimed SMALL ENTITY status before, or is now claiming SMALL ENTITY status, check box 5a on Part B - Fee(s) Transmittal and pay the PUBLICATION FEE (if required) and 1/2 the ISSUE FEE shown above.

II. PART B - FEE(S) TRANSMITTAL, or its equivalent, must be completed and returned to the United States Patent and Trademark Office (USPTO) with your ISSUE FEE and PUBLICATION FEE (if required). If you are charging the fee(s) to your deposit account, section "4b" of Part B - Fee(s) Transmittal should be completed and an extra copy of the form should be submitted. If an equivalent of Part B is filed, a request to reapply a previously paid issue fee must be clearly made, and delays in processing may occur due to the difficulty in recognizing the paper as an equivalent of Part B.

III. All communications regarding this application must give the application number. Please direct all communications prior to issuance to Mail Stop ISSUE FEE unless advised to the contrary.

**IMPORTANT REMINDER:** Utility patents issuing on applications filed on or after Dec. 12, 1980 may require payment of maintenance fees. It is patentee's responsibility to ensure timely payment of maintenance fees when due.

**PART B - FEE(S) TRANSMITTAL**

Complete and send this form, together with applicable fee(s), to: **Mail Stop ISSUE FEE**  
**Commissioner for Patents**  
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**INSTRUCTIONS:** This form should be used for transmitting the ISSUE FEE and PUBLICATION FEE (if required). Blocks 1 through 5 should be completed where appropriate. All further correspondence including the Patent, advance orders and notification of maintenance fees will be mailed to the current correspondence address as indicated unless corrected below or directed otherwise in Block 1, by (a) specifying a new correspondence address; and/or (b) indicating a separate "FEE ADDRESS" for maintenance fee notifications.

CURRENT CORRESPONDENCE ADDRESS (Note: Use Block 1 for any change of address)

58467 7590 11/21/2008

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AUSTIN, TX 78767

Note: A certificate of mailing can only be used for domestic mailings of the Fee(s) Transmittal. This certificate cannot be used for any other accompanying papers. Each additional paper, such as an assignment or formal drawing, must have its own certificate of mailing or transmission.

**Certificate of Mailing or Transmission**

I hereby certify that this Fee(s) Transmittal is being deposited with the United States Postal Service with sufficient postage for first class mail in an envelope addressed to the Mail Stop ISSUE FEE address above, or being facsimile transmitted to the USPTO (571) 273-2885, on the date indicated below.

(Depositor's name)

(Signature)

(Date)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/822,477	04/12/2004	Bruce D. Alexander	5681-76200	3141

**TITLE OF INVENTION: SYSTEM AND METHOD FOR APPLICATION RESOURCE UTILIZATION METERING AND COST ALLOCATION IN A UTILITY COMPUTING ENVIRONMENT**

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nonprovisional	NO	\$1510	\$0	\$0	\$1510	02/23/2009

EXAMINER	ART UNIT	CLASS-SUBCLASS
HU, JINSONG	2454	709-203000

1. Change of correspondence address or indication of "Fee Address" (37 CFR 1.363).

Change of correspondence address (or Change of Correspondence Address form PTO/SB/122) attached.

"Fee Address" indication (or "Fee Address" Indication form PTO/SB/47; Rev 03-02 or more recent) attached. **Use of a Customer Number is required.**

2. For printing on the patent front page, list

(1) the names of up to 3 registered patent attorneys or agents OR, alternatively,  
(2) the name of a single firm (having as a member a registered attorney or agent) and the names of up to 2 registered patent attorneys or agents. If no name is listed, no name will be printed.

1 \_\_\_\_\_  
2 \_\_\_\_\_  
3 \_\_\_\_\_

**3. ASSIGNEE NAME AND RESIDENCE DATA TO BE PRINTED ON THE PATENT (print or type)**

PLEASE NOTE: Unless an assignee is identified below, no assignee data will appear on the patent. If an assignee is identified below, the document has been filed for recordation as set forth in 37 CFR 3.11. Completion of this form is NOT a substitute for filing an assignment.

(A) NAME OF ASSIGNEE

(B) RESIDENCE: (CITY AND STATE OR COUNTRY)

Please check the appropriate assignee category or categories (will not be printed on the patent):  Individual  Corporation or other private group entity  Government

**4a. The following fee(s) are submitted:**

4b. Payment of Fee(s): (Please first reapply any previously paid issue fee shown above)

Issue Fee  
 Publication Fee (No small entity discount permitted)  
 Advance Order - # of Copies \_\_\_\_\_

A check is enclosed.  
 Payment by credit card. Form PTO-2038 is attached.  
 The Director is hereby authorized to charge the required fee(s), any deficiency, or credit any overpayment, to Deposit Account Number \_\_\_\_\_ (enclose an extra copy of this form).

**5. Change in Entity Status (from status indicated above)**

a. Applicant claims SMALL ENTITY status. See 37 CFR 1.27.

b. Applicant is no longer claiming SMALL ENTITY status. See 37 CFR 1.27(g)(2).

NOTE: The Issue Fee and Publication Fee (if required) will not be accepted from anyone other than the applicant; a registered attorney or agent; or the assignee or other party in interest as shown by the records of the United States Patent and Trademark Office.

Authorized Signature \_\_\_\_\_

Date \_\_\_\_\_

Typed or printed name \_\_\_\_\_

Registration No. \_\_\_\_\_

This collection of information is required by 37 CFR 1.311. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, Virginia 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.

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MHKKG/SUN P.O. BOX 398 AUSTIN, TX 78767				HU, JINSONG
		ART UNIT		PAPER NUMBER
		2454		DATE MAILED: 11/21/2008

## Determination of Patent Term Adjustment under 35 U.S.C. 154 (b)

(application filed on or after May 29, 2000)

The Patent Term Adjustment to date is 892 day(s). If the issue fee is paid on the date that is three months after the mailing date of this notice and the patent issues on the Tuesday before the date that is 28 weeks (six and a half months) after the mailing date of this notice, the Patent Term Adjustment will be 892 day(s).

If a Continued Prosecution Application (CPA) was filed in the above-identified application, the filing date that determines Patent Term Adjustment is the filing date of the most recent CPA.

Applicant will be able to obtain more detailed information by accessing the Patent Application Information Retrieval (PAIR) WEB site (<http://pair.uspto.gov>).

Any questions regarding the Patent Term Extension or Adjustment determination should be directed to the Office of Patent Legal Administration at (571)-272-7702. Questions relating to issue and publication fee payments should be directed to the Customer Service Center of the Office of Patent Publication at 1-(888)-786-0101 or (571)-272-4200.

<b>Notice of Allowability</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/822,477	ALEXANDER ET AL.
	<b>Examiner</b>	Art Unit

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTO-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1.  This communication is responsive to interview held on 11/18/08.
2.  The allowed claim(s) is/are 1-27.
3.  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a)  All b)  Some\* c)  None of the:
    1.  Certified copies of the priority documents have been received.
    2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3.  Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4.  A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5.  CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
  - (a)  including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached 1)  hereto or 2)  to Paper No./Mail Date \_\_\_\_\_.
  - (b)  including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6.  DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

#### Attachment(s)

1.  Notice of References Cited (PTO-892)
2.  Notice of Draftsperson's Patent Drawing Review (PTO-948)
3.  Information Disclosure Statements (PTO/SB/08),  
Paper No./Mail Date \_\_\_\_\_
4.  Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5.  Notice of Informal Patent Application
6.  Interview Summary (PTO-413),  
Paper No./Mail Date \_\_\_\_\_.
7.  Examiner's Amendment/Comment
8.  Examiner's Statement of Reasons for Allowance
9.  Other \_\_\_\_\_.

***EXAMINER'S AMENDMENT***

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.
2. Authorization for this Examiner's Amendment was given in a telephone interview with Mr. Robert C. Kowert (Reg. No. 39,255) on November 19, 2008.

**I. In the Specification:**

Please amend the paragraph 60 on page 22 of the specification as follow:

**[0060]** As noted above, in some embodiments code 215 may correspond to one or more of the software modules illustrated in FIGS. 1 or 2. In the illustrated embodiment of computer system 200, code 215 resides in memory 210. Memory 210 may be one embodiment of a computer-accessible storage medium configured to store program instructions and/or data such as included in code 215. However, in other embodiments, the program instructions and/or data included in code 215 may be received, sent or stored upon different types of computer-accessible media. Generally speaking, a computer-accessible medium may include a computer-accessible storage medium media or a computer-accessible memory medium media such as magnetic or

optical media, e.g., disk or CD-ROM included in some embodiments of computer system 20 as mass storage device 250. A computer-accessible storage medium may also include volatile or non-volatile media such as RAM (e.g. SDRAM, DDR SDRAM, RDRAM, SRAM, etc.), ROM, etc, that may be included in some embodiments of computer system 20 as memory 210. Further, a computer-accessible medium may include transmission media or signals such as electrical, electromagnetic, or digital signals, conveyed via a communication medium such as network and/or a wireless link, which may be included in some embodiments of computer system 200 as network interface device 260.

II. In the Claims:

Please amend claims amend claims 1-10 and 19 as follow:

Claim 1. (Currently amended) A hardware system, comprising:

a plurality of hardware computing devices configured to implement:  
a computational resource;  
a plurality of applications configured to utilize said computational resource;  
a metering utility configured to measure utilization of said computational resource by a given one of said plurality of applications; and  
a cost model configured to allocate a first portion of a cost of said computational resource to said given application dependent upon said measured utilization of said computational resource by said given application;

wherein to allocate the first portion of the cost, the cost model is further configured to:

determine a total available capacity of said computational resource; and compute a unit cost for said computational resource from said total available capacity and a cost share assigned to said computational resource.

Claim 2. (Currently amended) The hardware system as recited in claim 1, wherein said cost model is further configured to allocate a second portion of said cost of said computational resource to said given application as a fixed cost not dependent upon said measured utilization of said computational resource by said given application.

Claim 3. (Currently amended) The hardware system as recited in claim 2, wherein said first and second portions total one hundred percent of said cost, and wherein subject to said totaling, said first and said second portions each comprise from zero percent to one hundred percent of said cost.

Claim 4. (Currently amended) The hardware system as recited in claim 1, wherein said cost model includes direct and indirect costs of providing said computational resource.

Claim 5. (Currently amended) The hardware system as recited in claim 1, wherein said computational resource is one of a plurality of computational resources,

and wherein said cost model is further configured to distribute at least a portion of a total cost of providing said plurality of computational resources among said plurality of computational resources, such that each of said computational resources bears a respective cost share of said at least a portion of said total cost.

Claim 6. (Currently amended) The hardware system as recited in claim 5, wherein said cost model is further configured to:

determine a respective total available capacity of each of said computational resources; and

compute a respective unit cost for each of said computational resources from said respective total available capacity and said respective cost share.

Claim 7. (Currently amended) The hardware system as recited in claim 6, wherein determining said respective total available capacity includes applying a respective expected resource utilization factor.

Claim 8. (Currently amended) The hardware system as recited in claim 1, wherein said first portion of said cost is dependent upon a quality of service of said given application.

Claim 9. (Currently amended) The hardware system as recited in claim 1, wherein said computational resource includes a processor, a storage device, or a network communication device.

Claim 10. (Currently amended) A method implemented on computer hardware, comprising:

a plurality of applications utilizing a computational resource;  
measuring utilization of said computational resource by a given one of said plurality of applications; and  
allocating a first portion of a cost of said computational resource to said given application dependent upon said measured utilization of said computational resource by said given application, wherein said allocating comprises:

determining a total available capacity of said computational resource; and  
computing a unit cost for said computational resource from said total available capacity and a cost share assigned to said computational resource.

Claim 19. (Currently amended) A computer-accessible storage medium storing program instructions, wherein the program instructions are executable that when executed implement a method to:

implement a plurality of applications, wherein each of said plurality of applications  
is configured to utilize a computational resource;

measure utilization of said a computational resource by a given one of said a plurality of applications; and

allocate a first portion of a cost of said computational resource to said given application dependent upon said measured utilization of said computational resource by said given application, wherein to allocate the first portion of the cost, the program instructions are further computer-executable to:

determine a total available capacity of said computational resource; and  
compute a unit cost for said computational resource from said total available capacity and a cost share assigned to said computational resource.

#### ***Conclusion***

3. Any comments considering necessary by applicant must be submitted no later than the payment of issue fee and, to avoid processing delays, should preferably accompany the issue fee.
  
4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jinsong Hu whose telephone number is (571) 272-3965. The examiner can normally be reached on 8:00 AM - 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Flynn can be reached on (571) 272-1915. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*/Jinsong Hu/*

*Primary Examiner, Art Unit 2454*